



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

U.S. SERIAL NO. : 10/729,167
APPLICANTS : Fourney, et al.
FILING DATE : 4 December 2003
GROUP ART UNIT : 1654
EXAMINER : Roy R. Teller
DOCKET NO. : FP0602.2 US
TITLE : FAT REGULATION

Commissioner for Patents
PO Box 1451
Alexandria VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

This is in response to the Restriction Requirement dated 14 June 2006, the period for response being extended until 14 December 2006 by the accompanying petition and fee. Please consider the above-identified application in view of the following remarks.

I. Restriction

The Examiner restricted the claims in the above-referenced application as follows:

Group I: Claims 1, 3-14, 16, 18, 20, 22-24, 26, and 28-31, drawn to a method comprising stabilizing HIF alpha;
Group II: Claims 2, 4, 13, 15, 17, 19, 21, 25, and 27, drawn to a method that inhibits HIF hydroxylase activity; and,
Group III: Claims 32 and 33, drawn to a method for decreasing aerobic metabolism and increasing anaerobic metabolism.

In view of the following remarks, Applicants respectfully request that the Examiner reconsider and withdraw the requirement for restriction between Group I and Group II. The Examiner stated that while the inventions in groups I and II are directed to related methods, "the methods have different effects, i.e., group I stabilizes HIF alpha, and group II inhibits [sic] HIF hydroxylase activity." (Restriction Requirement, page 3.) Applicants submit that the methods recited in the claims of Group II can have similar effects as the methods recited in the claims of Group I. For example, in certain

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Name: Michael Moores

Signature:

instances, inhibiting HIF hydroxylase activity (encompassed by the methods of Group II) stabilizes HIF alpha (encompassed by the methods of Group I). (See, e.g., International Publication No. WO 03/049686, cited in the present application at paragraph [0054].) Accordingly, Applicants submit that it would pose no serious burden to examine claims 1-31, the claims of Groups I and II, together, in their entirety, as a search for art relevant to the subject matter of the claims of one group would also identify art relevant to the claims of the other group. Therefore, Applicants respectfully request reconsideration and withdrawal of the restriction requirement as it applies to the claims of Groups I and II, claims 1-31.

If the Examiner is not persuaded by the above statements to withdraw the Restriction Requirement between the claims of Group I and Group II, and in order to comply with the provisions of 37 C.F.R. 1.143, Applicants hereby provisionally elect, with traverse, the invention corresponding to the claims of Group I, claims 1, 3-14, 16, 18, 20, 22-24, 26, and 28-31. Applicants reserve without prejudice the right to pursue any non-elected subject matter in continuing applications.

The Examiner stated that “[c]laims 4 and 13 link(s) inventions I and II” and that the “restriction requirement among the linked inventions is subject to the nonallowance of the linking claim(s), claims 1-3, 5-12, and 14-31.” (Restriction Requirement, page 2.) Applicants acknowledge the Examiner’s further stating that “[u]pon the indication of allowability of the linking claim(s), the restriction requirement as to the linked inventions shall be withdrawn and any claim(s) depending from or otherwise requiring all the limitations of the allowable linking claim(s) will be rejoined and fully examined for patentability...” (Restriction Requirement, page 2.)

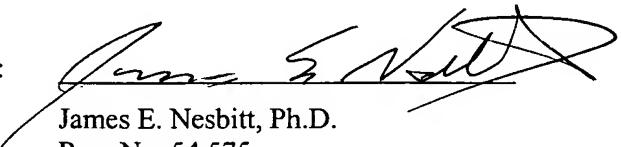
The Commissioner is hereby authorized to charge any necessary fees or credit any overpayment to Deposit Account No. 50-0811, referencing Docket No. FP0602.2 US. This form is enclosed in duplicate.

Please call Applicants' representative at 650-866-7289 with any questions regarding the present communication or the above-referenced application.

Respectfully submitted,

Date: 08 December 2006

By:


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